United Nations CERD/C/CHE/CO/7-9

International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined seventh to ninth periodic reports of Switzerland*

1. The Committee considered the combined seventh to ninth periodic reports of Switzerland, submitted in one document (CERD/C/CHE/7-9), at its 2283rd and 2284th meetings (CERD/C/SR.2283 and 2284), held on 14 and 17 February 2014. At its 2291st meeting (CERD/C/SR.2291), held on 20 February 2014, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the combined seventh to ninth periodic reports submitted by Switzerland, which provide detailed information on the implementation of the recommendations contained in the Committee's previous concluding observations.

3. The Committee also welcomes the additional information provided by the delegation of the State party in response to the issues raised by the Committee during the frank and constructive dialogue.

B. Positive aspects

4. The Committee notes with appreciation the legislative and policy developments to combat racial discrimination in the State party since its last report, including:

(a) Establishment of the Swiss Centre for Expertise in Human Rights, in 2010, as a five-year pilot project to facilitate the implementation of the State party's international human rights obligations;

(b) Launch of a four-year integration programme by the Federal Office of Migration and the cantons, in January 2014, which will lead, inter alia, to the establishment in all cantons of advisory services for victims of racial discrimination.

5. The Committee also welcomes the ratification by the State party of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against

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Women, in 2008, and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, in 2009.

C. Concerns and recommendations

Application of the Convention under domestic law

6. The Committee reiterates its concern at the lack of effective de jure implementation of the Convention, including the lack of progress in introducing legislation at the federal level that:

(a) Contains a clear definition of direct and indirect racial discrimination, in accordance with the definition set out in article 1, paragraph 1, of the Convention;

(b) Clearly prohibits and provides adequate remedies for racial discrimination under civil and administrative law, including in areas such as employment, education and housing;

(c) Makes committing an offence with racist motivation or aim an aggravating circumstance under the Criminal Code (arts. 1, 2 and 6).

The Committee recommends that the State party:

(a) Adopt a clear and comprehensive definition of racial discrimination, including direct and indirect discrimination, covering all fields of law and public life, in accordance with article 1, paragraph 1, of the Convention;

(b) Introduce an overarching provision in its civil and administrative law prohibiting both direct and indirect racial discrimination in all areas of private and public life, and provide adequate remedies for such discrimination;

(c) Incorporate a provision in the Criminal Code to the effect that committing an offence with racist motivation or aim constitutes an aggravating circumstance allowing for more severe punishment, as set out in the Committee's general recommendation No. 30 (2004) on discrimination against non-citizens, and take into account the Committee's general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

7. The Committee is concerned at the restrictive interpretation of article 261 bis of the Criminal Code by the judicial authorities, noting that cases of discriminatory remarks or actions directed at people from certain regions or ethnicities are frequently dismissed on the grounds that they are not based on a particular nationality or ethnicity. It expresses further concern that, following the revision of the Criminal Procedural Code which entered into force in January 2011, under article 115 of the Code, only a person who has suffered direct harm may be a party to the proceedings, thus precluding associations and organizations from filing complaints of racial discrimination. The Committee regrets that remedies in the area of civil and administrative law are restricted to compensation only (arts. 2 and 6).

The Committee urges the State party to take effective measures, as provided for in article 6 of the Convention, to ensure that everyone within its jurisdiction enjoys effective protection and remedies through the competent national courts and other State institutions against any acts of racial discrimination which violate his or her rights, as well as the right to seek from such courts just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination, including restitution. The Committee also calls on the State party to sensitize legal personnel, including the judiciary, to international norms against racial discrimination.

8. While noting the unique system of direct democracy in the State party, the Committee expresses deep concern at the lack of sufficient safeguards to ensure that popular initiatives proposed by citizens do not contradict the obligations of the State party under the Convention (art. 2).

The Committee urges the State party to step up its efforts to introduce an effective and independent mechanism to review the compatibility of popular initiatives with the State party's obligations under international human rights law, including the Convention. The Committee also recommends that the State party urgently and systematically strengthen its efforts at all levels to widely publicize and raise awareness among the public about any conflict between a preposed initiative and the State party's international human rights obligations, as well as the ensuing consequences.

Absence of reliable data on discrimination

9. Despite allegations of discrimination on the basis of race, colour, descent, or national or ethnic origin in various areas of public and private life, particularly in accessing housing and the labour market, and in treatment at work and at school, the Committee is concerned at the absence of reliable and comprehensive data on such incidents, including court cases. Moreover, while noting that the DoSyRa documentation and monitoring system was established in 2008 to record cases of racism registered by the counselling services affiliated to the Counselling Network for Victims of Racism, and that the Federal Commission against Racism has been mandated to collect statistics of cases under article 261 bis of the Criminal Code, the Committee is concerned that there is no nationwide established reporting practice (arts. 2 and 6).

The Committee recommends that the State party establish an effective data collection system, using various indicators of ethnic diversity on the basis of anonymity and self-identification of persons and groups, to provide an adequate empirical basis for policies to enhance the equal enjoyment by all of the rights enshrined in the Convention and facilitate the monitoring thereof, as set out in the Committee's revised reporting guidelines (CERD/C/2007/1, paras. 10 and 12), bearing in mind the Committee's general recommendation No. 24 (1999) on reporting of persons belonging to different races, national/ethnic groups, or indigenous peoples. The Committee also urges the State party to ensure that everyone within its jurisdiction enjoys the right to effective protection and remedies against discrimination in all areas of public and private life, including in accessing housing and the labour market, and in treatment at work and at school, with adequate reparation or satisfaction for any damage suffered as a result of such discrimination, in accordance with article 6 of the Convention.

National human rights institution

10. While welcoming the issuance of a new appointment order by the Federal Council to strengthen the independence of the Federal Commission against Racism, in May 2013, and the establishment of the Swiss Centre for Expertise in Human Rights, in 2010, the Committee reiterates its concern at the lack of a national human rights institution in accordance with the Paris Principles. It also notes that the Federal Commission against Racism has been granted "C" status by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (art. 2).

The Committee reiterates its previous recommendation that the State party consider establishing a national human rights institution in accordance with the Principles relating to the status of national institutions (the Paris Principles), taking into account the Committee's general recommendation No. 17 (1993) on the establishment of

national institutions to facilitate implementation of the Convention. It also recommends that the Federal Commission against Racism be provided with adequate funding and resources to effectively and independently carry out its mandate to combat racial discrimination.

Reservations

11. The Committee reiterates its concern at the maintenance of reservations to article 2 of the Convention regarding the right of the State party to apply its legal provisions concerning the admission of foreigners to the Swiss market, and to article 4 concerning the right of the State party to take necessary legislative measures taking due account of freedom of opinion and freedom of association (arts. 2 and 4).

The Committee reiterates its previous recommendation that the State party consider withdrawing its reservations to article 2, paragraph 1 (a), and article 4 of the Convention. Should the State party decide to maintain the reservations, the Committee requests that the State party provide, in its next periodic report, detailed information as to why the reservations are necessary, the nature and scope of the reservations, their precise effects in terms of national law and policy, and any plans to limit or withdraw the reservations within a specified time frame.

Racism and xenophobia in politics and the media

12. The Committee is deeply concerned at racist stereotypes promoted by members of right-wing populist parties and sections of the media, in particular against people from Africa and south-eastern Europe, Muslims, Travellers, Yenish, Roma, asylum seekers and immigrants. It is also concerned at the display of political posters with racist and/or xenophobic content and of racist symbols, as well as at racist behaviour and at the lack of prosecution in such cases. The Committee is further concerned at the xenophobic tone of popular initiatives targeting non-citizens, such as the initiative "against the construction of minarets", adopted in November 2009, the initiative on the "expulsion of foreign criminals", adopted in November 2010, and the initiative "against mass immigration", adopted in February 2014. The Committee notes that such initiatives have led to a sense of unease among the affected communities and in Swiss society generally (arts. 2, 4 and 6).

The Committee recommends that the State party:

(a) Undertake extensive and systematic awareness-raising activities at all levels in the public and political spheres to combat stigmatization, generalization, stereotyping and prejudice against non-citizens, sending a clear message concerning the abhorrence of racial discrimination, which degrades the standing of individuals and groups in the estimation of society, taking into account the Committee's general recommendation No. 30 (2004) on discrimination against non-citizens;

(b) Take appropriate measures towards ensuring that media representations of ethnic groups are based on the principles of respect, fairness and the avoidance of stereotyping, and that the media avoid referring unnecessarily to race, ethnicity, religion and other group characteristics in a manner that may promote intolerance;

(c) Sensitize legal personnel, including the judiciary, to international norms protecting freedom of opinion and expression and norms against racist hate speech, as set out in the Committee's general recommendation No. 35 (2013) on combating racist hate speech;

(d) Take swift measures, in addition to prosecution, to respond to instances of racist remarks or acts, including formal rejection by high-level public officials and

condemnation of hateful ideas expressed, as set out in the Committee's general recommendation No. 35 (2013) on combating racist hate speech.

Naturalization

13. While noting that the Swiss Citizenship Act is currently being revised, the Committee expresses concern at initiatives calling for stricter criteria for naturalization, including the popular initiative adopted in Bern in November 2013, which stipulates that recipients of welfare benefits cannot become naturalized citizens. While the Committee is aware that this initiative is currently being reviewed by the Parliamentary Assembly, it is concerned that the general political climate in the State party may lead to a more discriminatory system of naturalization (arts. 1 and 5).

The Committee recommends that the State party ensure that any revision of the Swiss Citizenship Act does not have a disproportionate and discriminatory impact on certain groups. It also reiterates its previous recommendation that the State party adopt uniform standards on integration for the naturalization process, in conformity with the Convention, and take all effective and adequate measures to ensure that naturalization applications are not rejected on discriminatory grounds throughout the territory of the State party, including by establishing an independent and uniform appeals procedure in all cantons.

Racial profiling and excessive use of force

14. The Committee reiterates its previous concern at the use of racial profiling by law enforcement officials and at the lack of related statistics. It is also concerned at reports of excessive use of force during police checks, harassment of Roma and people of African origin by the police, and the lack of an independent mechanism throughout the State party to receive and investigate complaints of mistreatment by the police (arts. 2 and 5).

Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee calls on the State party to take effective measures to ensure that individuals are not targeted for identity checks, searches and other police operations on the grounds of race or ethnicity, and to take appropriate legal measures against law enforcement officials for unlawful conduct based on racially discriminatory grounds. It also recommends that the State party establish an independent mechanism to receive and investigate complaints concerning misconduct by police officers in each canton, and ensure that human rights training for police officers is conducted in all cantons, in accordance with general recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights.

National minorities

15. While welcoming the efforts made by the State party to guarantee the rights of national minorities, the Committee remains concerned that Traveller communities and the Yenish, Manush, Sinti and Roma continue to face obstacles in accessing education and preserving their language and lifestyle. The Committee expresses concern that those communities may face indirect discrimination as a result of seemingly neutral laws and policies, particularly with regard to land-use planning and police regulations on trading activity and regulations on the stationing of caravans. It also notes that these communities are frequently subjected to generalizations and stereotypes in the media, which can lead to stigmatization (art. 5).

The Committee recommends that the State party strengthen its efforts to promote and protect the rights of national minorities, particularly with regard to access to

education and the preservation of their language and lifestyle. It calls on the State party to ensure that laws and policies which may seem neutral do not have any discriminatory impact on the rights of members of national minorities. The Committee also encourages the State party to raise awareness among the public about the history and characteristics of different national minorities, and to take appropriate and effective measures to avoid generalizations and stereotypes in the media.

Persons granted temporary admission ("F" permit)

16. While welcoming the humanitarian basis of the provisional admission status granted to persons who have fled conflict and generalized violence and cannot return to their home countries ("F" permit), the Committee expresses deep concern at the undue hardship faced by persons who are granted such status if they remain in the State party for a long time. It notes with concern that this status is not linked with a residence permit, and imposes restrictions on "F" permit holders in most areas of their lives, which could give rise to de facto discrimination against such vulnerable non-citizens, including: (a) restrictions on freedom of movement, including from one canton to another within the State party, as well as travel abroad; (b) de facto lack of access to employment due, inter alia, to the perceived uncertainty of the provisional admission status; (c) the lengthy waiting period of three years or more for family reunification, which also requires an adequate level of income and a suitable place of accommodation; and (d) limited access to educational and training opportunities and to health care (art. 5).

The Committee urges the State party to eliminate any indirect discrimination and undue obstacles for persons granted provisional admission status to enjoy their basic human rights. In this regard, the Committee reminds the State party that differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim and are not proportional to the achievement of that aim, as set out in the Committee's general recommendation No. 30 (2004) on discrimination against non-citizens. The Committee recommends that the State party eliminate disproportionate restrictions on the rights of provisionally admitted persons, in particular those who have been in the State party for a long time, by enabling them to move freely within the State party and by facilitating the process of family unification and access to employment, educational opportunities and health care.

Non-citizens

17. The Committee remains concerned at the situation of asylum seekers and refugees, who are accommodated in remote reception centres with limited access to employment and training opportunities, and whose rights are at continuous risk of being further eroded. It expresses particular concern at the restriction of freedom of movement of asylum seekers in some public spaces in some municipalities. The Committee is also concerned about the situation of migrants and undocumented persons, in particular women, who are more vulnerable to poverty and violence and are at risk of multiple forms of discrimination in areas such as access to housing and employment. While welcoming the revision of the Federal Act on Foreign Nationals in July 2013, which provides for the right of victims of marital violence to remain in Switzerland, the Committee expresses concern that the level of violence must reach a certain threshold of severity for the benefits of that Act to apply (arts. 2 and 5).

The Committee calls upon the State party to take effective measures to eliminate discrimination against non-citizens, in particular migrants, undocumented persons,

asylum seekers and refugees, and to ensure that any restriction on their rights is based on a legitimate aim and is proportionate to the achievement of the aim, in accordance with the Committee's general recommendation No. 30 (2004) on discrimination against non-citizens. It also urges the State party to address the particular risks and vulnerability faced by women belonging to those groups, and to ensure that victims of marital violence can remain in the State party without undue procedural obstacles. In this regard, the Committee draws the attention of the State party to its general recommendation No. 25 (2000) on gender related dimensions of racial discrimination.

Education and training on combating racial discrimination

18. While noting various measures taken by the State party to promote the integration of foreigners and ethnic and religious communities in the State party, the Committee expresses concern at the absence of campaigns directed at the public to combat racial discrimination throughout the State party. It also reiterates its concern at the lack of a national action plan to combat racial discrimination, as referred to in the Durban Declaration and Programme of Action (arts. 2 and 7).

The Committee reminds the State party that integration is a two-way process involving both majority and minority communities, and recommends that the State party adopt additional measures targeting the majority community to combat racial discrimination. In this regard, the Committee reiterates its previous recommendation that the State party adopt a national action plan to combat racial discrimination, and carry out information campaigns to raise awareness among the public of the manifestations and harms of racial discrimination. It also encourages the State party to ensure that school curricula, textbooks and teaching materials are informed by and address human rights themes and seek to promote mutual respect and tolerance among nations and racial and ethnic groups.

D. Other recommendations

Ratification of other treaties

19. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying international human rights treaties which it has not yet ratified, in particular treaties with provisions that have a direct relevance to communities that may be the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, International Labor Organization Convention No. 189 (2011) concerning decent work for domestic workers, the 1961 Convention on the Reduction of Statelessness and the United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education.

Consultations with organizations of civil society

20. The Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working in the area of human rights protection, in particular combating racial discrimination, in connection with the preparation of the next periodic report and the follow-up to the present concluding observations.

Dissemination

21. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the

Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.

Common core document

22. Noting that the State party submitted its core document in 2001, the Committee encourages it to submit an updated core document, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth Inter-Committee Meeting of the human rights treaty bodies, held in June 2006 (HRI/GEN.2/Rev.6, chap. I).

Follow-up to concluding observations

23. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 12, 13 and 16 above.

Paragraphs of particular importance

24. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 6, 7, and 9 above and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement those recommendations.

Preparation of the next periodic report

25. The Committee recommends that the State party submit its combined tenth to twelfth periodic reports, in one document, by 29 December 2017, taking into account the specific reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60 to 80 pages for the common core document (HRI/GEN.2/Rev.6, chap. I, para. 19).